



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cindy Chapman—Per Diem—Incapacitated Due to
Childbirth While on Temporary Duty

File: B-260194

Date: October 17, 1995

DIGEST

Under Federal Travel Regulation, provisions applicable when temporary duty is interrupted due to incapacitating illness or injury, an employee on temporary duty travel who underwent childbirth at the temporary duty station may be paid per diem for the period she was in the hospital and at the temporary duty station after being discharged from the hospital for a reasonable time period while she is recovering from childbirth and "incapacitated" from performing her duty, provided the agency grants approval. The per diem may continue for a reasonable period, normally not to exceed 14 days, which may be extended by the agency.

DECISION

The Federal Highway Administration, Department of Transportation, requests a decision concerning the payment of per diem to an employee who underwent childbirth at a temporary duty station.¹ As explained below, the employee's per diem may be continued while she is in the hospital, and also for a reasonable time after she is discharged while she is incapacitated from performing her duty.

BACKGROUND

Ms. Cindy Chapman, an employee of the Federal Highway Administration, whose official duty station was Lakewood, Colorado, began an extended temporary duty assignment at Dobbins, California, on June 1, 1993. Ms. Chapman entered a hospital at the temporary duty station on June 18, gave birth, and was discharged from the hospital on June 19, 1993. Rather than return to her permanent duty station after leaving the hospital, Ms. Chapman remained at the temporary duty station on

¹The request was submitted by the Authorized Certifying Officer, Central Federal Lands Highway Division, Denver, Colorado.

approved sick leave while she was recovering from childbirth. She has submitted a claim for 14 days' per diem for this period. The agency notes that the cost to have returned Ms. Chapman to her official duty station in Colorado would have approximated 14½ days of per diem at the rate applicable in California.

OPINION

Payment of per diem to an employee whose temporary duty assignment is interrupted because of an incapacitating illness or injury is allowed under Part 301-12 of the Federal Travel Regulation (FTR).² We have recognized in another context that events related to childbirth may come within the provisions of Part 301-12. Lucy B. Cusick, B-223872, Nov. 25, 1986. Similarly, we believe that Ms. Chapman's incapacity to perform her duties due to childbirth falls within these provisions. Thus, the question in this case is how the per diem provisions in Part 301-12 apply to Ms. Chapman's situation.

Section 301-12.5(a) of the FTR states that when an employee interrupts a temporary duty assignment because of an incapacitating illness or injury and takes leave of any kind, the employee shall be paid per diem for the location of the interruption "for a reasonable period, normally not to exceed 14 calendar days (including fractional days) for any one period of absence. However, a longer period may be approved by the employee's agency if justified by the circumstances of a particular case."

The regulations also provide that agencies may authorize or approve per diem based on exigencies of the employee's personal situation and the agency mission, and agencies are directed to prescribe written policies and procedures to govern its authorization and approvals under Part 301-12. FTR § 301-12.2. Although the agency in this case has prescribed such policies and procedures, the agency advises that they do not specifically determine the period of incapacity due to childbirth; however, it is clear that generally authorizing payment of per diem and the determination of the length of incapacitation from duty are matters primarily for the agency to determine, within the parameters of the regulation and any related policies it may have prescribed.

The periods of incapacity to perform temporary duty for employees undergoing childbirth may vary depending on the individual and the circumstances of the childbirth. Thus, it appears that each situation should be evaluated by the agency involved based upon the information available, as provided by the employee's

²These regulations implement 5 U.S.C. § 5702, subsection (b)(3) of which provides authority to continue per diem payments under certain circumstances when an employee's temporary duty is interrupted because of incapacitating illness or injury which is not due to the employee's misconduct.

statement, a doctor's report, the length of hospital stay, etc. As noted above, this is primarily a determination for the agency to make. In Ms. Chapman's case, we would have no objection to the payment of her claim for 14 days of per diem if the appropriate agency official approves such payment upon a finding that she was incapacitated from performing temporary duty for that period.

/s/Seymour Efros
for Robert P. Murphy
General Counsel